

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BEIRUT

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E.O. 11652: N/A

TAGS: ETRN, LE

SUBJECT: CIVAIR - PAN AM SCHEDULES

REF: BEIRUT 3507

1. DEPARTMENT DOES NOT SUBSCRIBE TO EMBASSY VIEW THAT WE SHOULD PROMPTLY AGREE TO RENEGOTIATE 1972 AIR TRANSPORT AGREEMENT, AS DEMANDED BY GOL. WE WOULD THEN PRESUMABLY AGAIN BE FACED BY A JOINT MEA/TMA EFFORT TO OBTAIN CONCESSIONS FOR BOTH AIRLINES AND WOULD BE OPENING OURSELVES TO UNWARRANTED DEMANDS BY LEBANESE. SINCE WE CANNOT ACCEDE TO TMA'S ADDITIONAL ROUTE INTERESTS AS PRICE OBTAINING APPROVAL PAN AM'S SCHEDULE, SUCH NEGOTIATIONS COULD ONLY RESULT EITHER IN GOL GIVING IN OR IN US HAVING TO NEGOTIATE ADJUSTMENTS IN, OR CONSTRAINTS ON, PAN AM SCHEDULE, PRESUMABLY AS A STOP GAP MEASURE PENDING FURTHER EFFORT RENEGOTIATE 1972 AGREEMENT. IN ANY EVENT, AS WE

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READ GOL NOTE, THERE ARE AMBIGUITIES WHICH APPEAR LEAVE

DOOR OPEN FOR SOME MANEUVERING ON BOTH SIDES. FOR EXAMPLE, WHILE PARAGRAPH 7 (BEIRUT 3663) CALLS FOR RENEGOTIATION OF WHOLE AGREEMENT, PARAGRAPH 8 TIES APPROVAL PAN AM'S SCHEDULE ONLY TO A NEW MEMORANDUM OF CONSULTATION WHICH DEALS ONLY WITH CAPACITY ISSUE.

2. FYI: PAN AM UNDERSTANDABLY SERIOUSLY CONCERNED OVER GOL RESPONSE. NEW SCHEDULE INVOLVES MAJOR RESHUFFLING OF PAN AM'S ROUND-THE-WORLD SERVICES AND OTHER FEATURES WHICH ARE RESULT OF MARKET CHANGES OR FUEL-RELATED INTERAIRLINE AGREEMENTS INVOLVING OTHER COUNTRIES. THERE IS THUS NO REASONABLE WAY FOR PAN AM READJUST ITS JUNE 1 SCHEDULE WITHOUT INCURRING POSSIBLY DISASTEROUS FINANCIAL PENALTIES WHICH AIRLINE CANNOT AFFORD WHEN IT IS FIGHTING ON ALL FRONTS TO LIMIT ITS LOSSES FOR THE SIXTH STRAIGHT YEAR. IN VIEW DENIAL PAN AM SCHEDULE CONTAINED IN DGCA LETTER DATED MARCH 30 AND LEAD TIME REQUIRED ARRANGE FOR AIRCRAFT, CREW, PROMOTION, ETC., PAN AM HAS FOUND ITSELF FORCED TO DELAY IMPLEMENTATION OF SCHEDULE UNTIL AT LEAST THIS FALL. END FYI.

3. EMBASSY SHOULD DELIVER FOLLOWING REPLY TO MFA:

A. ...REFERS TO HIS NOTE OF MARCH 26, 1974, CONCERNING THE SCHEDULE CHANGE OF PAN AMERICAN WORLD AIRWAYS, WHICH WAS PROPOSED TO COME INTO EFFECT ON APRIL 28, 1974.

B. USG CONCERNED OVER VIEWPOINT EXPRESSED IN GOL NOTE THAT THE AGREEMENTS IN FORCE BETWEEN OUR TWO COUNTRIES CANNOT AUTHORIZE PAN AM TO MODIFY ITS SCHEDULES UNILATERALLY. USG DISAGREES WITH THIS VIEWPOINT AND BELIEVES GOL HAS NOT ONLY MISINTERPRETED THE RELEVANT AGREEMENTS BUT ALSO OVERLOOKED CERTAIN PROVISIONS.

C. PARAGRAPH E OF ARTICLE 9 OF THE AIR TRANSPORT AGREEMENT STATES EXPLICITLY AND WITHOUT QUALIFICATION THAT "NEITHER CONTRACTING PARTY SHALL UNILATERALLY RESTRICT THE AIRLINE OR AIRLINES OF THE OTHER CONTRACTING PARTY WITH RESPECT TO CAPACITY, FREQUENCY, SCHEDULING OR TYPE OF AIRCRAFT EMPLOYED IN CONNECTION WITH SERVICES LIMITED OFFICIAL USE

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OVER ANY OF THE ROUTES SPECIFIED IN THE ROUTE SCHEDULE TO THIS AGREEMENT". THE REFUSAL OF GOL AUTHORITIES TO AUTHORIZE THE SCHEDULE CHANGE IN QUESTION IS A DIRECT VIOLATION OF THIS PROVISION.

D. IN THE MEMORANDUM OF CONSULTATION OF JUNE 13, 1972, THE LEBANESE DELEGATION EXPRESSED CONCERNS OVER PAN AM'S CARRIAGE ON THE BEIRUT-ISTANBUL, BEIRUT-FRANKFURT, AND

BEIRUT-TEHRAN SECTORS. THE US DELEGATION STATED THAT "IT DID NOT ANTICIPATE THAT THERE WOULD BE ANY SIGNIFICANT CHANGE IN PAN AM'S PARTICIPATION IN (THE FIRST TWO) MARKETS" AND "THAT A SIMILAR ACCORD PATTERNED ON THE SAME PRINCIPLES WOULD BE ACCEPTABLE AND APPLICABLE TO THE BEIRUT-TEHRAN SECTOR AFTER MEA COMMENCES SERVICES".

E. THE MEMORANDUM OF CONSULTATION ALSO NOTED THE LEBANESE CONCERN WITH "ANY SUBSTANTIAL INCREASE IN CAPACITY AND POSSIBLE CHANGES IN PAN AM'S ROUTINGS WHICH MIGHT INTRODUCE NEW NON-STOP SECTORS AT BEIRUT WITH POSSIBLE UNDUE EFFECT ON THE SERVICES OF MEA". THE US DELEGATION STATED THAT "PAN AM'S SERVICE PATTERN WAS WELL ESTABLISHED AND UNLIKELY TO CHANGE IN THE NEAR FUTURE", BUT IT NEVERTHELESS "CONFIRMED THE RIGHT OF PAN AM TO CHANGE ITS ROUTING PATTERN IF IT DESIRED TO DO SO". IT ALSO NOTED THAT "ANY SIGNIFICANT ROUTING CHANGES WOULD BE REVIEWED BY THE USG BEFORE THEIR FILING WITH THE GOL AND SUCH REVIEW WOULD TAKE INTO ACCOUNT THE CONCERNS EXPRESSED BY THE GOL".

F. PURSUANT TO THE FOREGOING UNDERTAKING, THE PAN AM ROUTING CHANGES WERE REVIEWED BY THE USG BEFORE THEIR FILING WITH THE GOL. THE USG THEREFORE BELIEVES IT HAS FULLY COMPLIED WITH THE LETTER OF THE FOREGOING PROVISIONS OF THE MEMORANDUM OF CONSULTATION. MOREOVER, AS EXPLAINED DURING THE CONSULTATIONS IN FEBRUARY 1974, THE USG FIRMLY BELIEVES THAT THE PAN AM SCHEDULE CHANGES, WHILE CLEARLY INVOLVING "SIGNIFICANT ROUTING CHANGES", DO TAKE INTO ACCOUNT THE CONCERNS EXPRESSED BY THE LEBANESE DELEGATION IN 1972 AND SUBSEQUENTLY. IT SHOULD ALSO BE NOTED THAT THE US AIRLINE HAS EXERCISED RESTRAINT ON ITS SERVICE PATTERN FOR A SUBSTANTIAL PERIOD SINCE THE JUNE 13, LIMITED OFFICIAL USE

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1972, MEMORANDUM OF CONSULTATION WAS SIGNED. THE US NEVERTHELESS OFFERED CERTAIN ASSURANCES IN THE FEBRUARY CONSULTATIONS WHICH, TOGETHER WITH AN EXPOSITION OF THE ECONOMIC FACTORS INVOLVED, WERE SET FORTH IN THE USDEL'S DOCUMENT OF FEBRUARY 20, 1974, A COPY OF WHICH IS ATTACHED HERETO (STATE 36075) AND REAFFIRMED AS A USG UNDERTAKING.

G. IT IS THEREFORE THE VIEW OF THE USG THAT IT HAS COMPLIED FULLY WITH BOTH THE LETTER AND SPIRIT OF ALL RELEVANT AGREEMENTS ON THIS MATTER, AND THAT THE GOL ACTION IN REFUSING TO AUTHORIZE THE PAN AM SCHEDULE IN QUESTION IS A VIOLATION OF PARAGRAPH E OF ARTICLE 9 OF THE AIR TRANSPORT AGREEMENT AND OF THE PROVISIONS OF THE MEMORANDUM OF CONSULTATION OF JUNE 13, 1972.

H. THE GOL NOTE DRAWS A CONNECTION BETWEEN THE FOREGOING CAPACITY MATTERS AND PARAGRAPH 2 OF THE EXCHANGE OF NOTES OF SEPTEMBER 1, 1972, RELATING TO ROUTE RIGHTS. THE USG SEES NO CONNECTION BETWEEN THESE TWO MATTERS.

MOREOVER, PARAGRAPH 5 OF THE GOL NOTE STATES THAT THE SEPTEMBER 1, 1972 NOTES PROVIDE THAT THE PAN AM SCHEDULE CHANGES WOULD HAVE TO BE THE SUBJECT OF INTERGOVERNMENTAL CONSULTATIONS. THE SAME INTERPRETATION IS ALSO MADE IN PARAGRAPH 6. THIS IS NOT WHAT PARAGRAPH 2 OF THESE NOTES EITHER STATES OR IMPLIES. SINCE THE MATTER OF ROUTE RIGHTS CANNOT BE CONSIDERED TO BE CONNECTED WITH THE QUESTION OF PAN AM SCHEDULES, THE USG BELIEVES IT WOULD BE INAPPROPRIATE TO UTILIZE THE CONSULTATIONS ENVISIONED BY PARAGRAPH 2 OF THE SEPTEMBER 1, 1972 NOTES AS A VEHICLE TO ADDRESS THE QUESTION OF PAN AM'S SCHEDULE.

I. AS THE LEBANESE AUTHORITIES WILL NO DOUBT APPRECIATE, THE PAN AM SCHEDULE CHANGES WILL REQUIRE EXTENSIVE REDEPLOYMENT OF AIRCRAFT AND CREWS ON A NUMBER OF SEGMENTS AND ADVANCE PROMOTION AT A NUMBER OF POINTS. THESE COMPLEX STEPS REQUIRE ADEQUATE LEAD TIME. REGRETTABLY, THE UNCERTAINTIES CREATED BY THE LEBANESE ACTIONS, PARTICULARLY THE DENIAL OF THE ENTIRE SCHEDULE BY THE LEBANESE DGCA ON MARCH 30, HAVE MADE IT IMPOSSIBLE LIMITED OFFICIAL USE

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FOR PAN AM TO PROCEED WITH THE NECESSARY PLANNING TO EFFECT THE SCHEDULE CHANGE ON JUNE 1.

J. THE USG WISHES TO EXPRESS ITS GREAT CONCERN THAT ACTION TAKEN BY THE GOL CONTRARY TO THE LETTER AND SPIRIT OF THE AGREEMENT HAS PRODUCED THIS UNFORTUNATE RESULT. THE USG OF COURSE, RESERVES ALL RIGHTS ON THE QUESTION. KISSINGER

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